IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 22065 of 2007(B)

PETITIONER:

A.G.GEORGE, PRESIDENT,
MANAGING COMMITTEE, MATHIRIPPILLY SERVICE
CO-OPERATIVE BANK LTD., KOTHAMANGALAM,
ERNAKULAMD DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES(G), ERNAKULAM.

2. THE ASST. REGISTRAR OF CO-OPERATIVE
SOCIETIES(C), KOTHAMANGALAM.

BY GOVT. PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.22065 of 2007

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Dated this the 23rd day of July, 2007

JUDGMENT

The writ petitioner challenges Ext.P1. Ext.P1 is an order purported to be issued under Section 65(1)(a) of the Kerala Co-operative Societies Act for inquiry through a named officer, namely, the Assistant Registrar (General), Kothamangalam into the affairs of the Society, of which the petitioner is the President. Case of the petitioner in brief is as follows:

Administration is controlled by substantially members who are having their political allegiance to Indian National Congress and two members who belong to the Indian Union Muslim League. The Society was a Class V Society with a deposit of Rs.Three Lakhs. It is their case that the present deposit in the Bank is more than Rs.13 Crores. It is one of the few Societies in the District, which is capable of paying the maximum dividend of 20% to the members of the Society and this is paid continuously to the members from 1997 onwards. The Society is functioning with its own funds without availing the financial assistance

from the District Co-operative Bank. The Society had given financial assistance to other Co-operative societies as permitted by bye-laws. The current audit is complete upto the year 2005-2006. No adverse remarks are there in the same regarding the functioning of the Society. Petitioner claims to be in office from 1992 onwards as President and he was also an elected Councilor for the last four successive elections to the Council and was elected as the Chairman of the Municipality. It is the further case of the petitioner that the Society is functioning as a model Society. While so, complaint was raised through one Sri. Leju Poulose and 76 others. It is stated further that without further loss of time the Joint Registrar was prompt enough to order inquiry under Section 65(1)(a) of the Act on the basis of the complaint thus received. It is stated that the Officer came on 6.7.2007 with two Inspectors and after spending less than ten minutes in the Society they left and came to the Society on 11.7.2007 and sought to give endorsement for the receipt of a communication dated 7.7.2007 as if it was served on the Secretary on 7.7.2007. According to the petitioner, petitioner has sought to explain the socalled points which are sought to be made,

which is the subject matter of the inquiry, to show that all is well with the Society. It is their case that to satisfy political masters the inquiry is ordered under Section 65(1)(a). It is the case of the petitioner that whatever material or evidence, which is made available by the Bank will not be taken into consideration by the Inquiry Officer. It is also submitted that the inquiry is an abuse of the process of law. Ext.P2 is a notice issued by the Inquiry Officer calling upon the members of the Managing Committee to offer their explanations to nine points which are raised there.

2. I heard counsel for the petitioner Sri. George Poonthottam and learned Government Pleader.

3. Sri. George Poonthottam would point out that inquiry under Section 65(1)(a) is contemplated suo motu. However he points out that this is a case where inquiry is ordered on the basis of a complaint given by certain members. The signatures in the complaint itself have not been verified, he submits. It is further contended that the law requires that the officer ordering inquiry should be satisfied of the need to hold the inquiry under Section 65. Ext.P1 does not disclose such

satisfaction, he contends. He would contend that the Society is running very well as evident from the fact that 20% dividend, which is the maximum, is being disbursed from 1997 onwards. The audit reports have been made upto 2005-2006 and they also did not disclose any material to order an inquiry. There is no basis to order an inquiry, he contends. He submits that the explanation given by the Committee will also not be considered by the Inquiry Officer.

4. Learned Government Pleader points out that all the requirements of Section 65 are satisfied. She points out that though there is reference to the compliant given by certain members, there is also reference as paper No.2 to the communication by the Assistant Registrar. It is evident from Ext.P1 that the Joint Registrar has referred to the communication of the Assistant Registrar, who has stated apparently in her communication that many of the complaints are true to facts. It is also stated by her that a more detailed inquiry is called for. The Officer in Ext.P1 further indicated that it is necessary to hold an inquiry. Of course petitioner points out that the very same officer is appointed to hold the inquiry.

5. Section 65(1)(a) contemplates inquiry being conducted on suo motu satisfaction of the officer. In this case apart from the complaint given, a preliminary inquiry is apparently done by the Assistant Registrar, who has also given her version. So it cannot be said that this is a case where inquiry is ordered on the basis of complaints of the persons alone. There is also a communication received from the officer upon which the Joint Registrar has become satisfied for the need for an inquiry under Section 65.

6. This court is concerned with not the correctness of the decision, but it is concerned with the decision making process. I also note that the Joint Registrar has expressed his satisfaction for the need for conducting such inquiry. There is a named officer. The matters to be inquired into are fairly clear. In such circumstances, I do not think that this court should under Article 226 interfere with such an inquiry. I am not impressed by the contention that the person, who conducted the preliminary inquiry cannot be appointed to conduct inquiry under Section 65. Apart from the fact that there is no legal bar to such appointment, I do not also see any basis for impugning such

appointment.

7. Learned Government Pleader points out that the apprehension of the petitioner that the explanation to be offered by the Committee will not be considered may not be correct. To allay the apprehension of the petitioner, it is made clear that the Inquiry Officer will consider each and every explanation given by the members of the Committee, who it is said has already given reply to Ext.P2, when conducting the inquiry. On receipt of the explanation given by the members of the Committee, if the Inquiry Officer feels that further clarification or explanation is necessary, which can be furnished by the members of the Committee, the Inquiry Officer will certainly give such an opportunity also to the members of the Committee.

Subject to this , the writ petition is dismissed.

(K.M. JOSEPH, JUDGE)

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